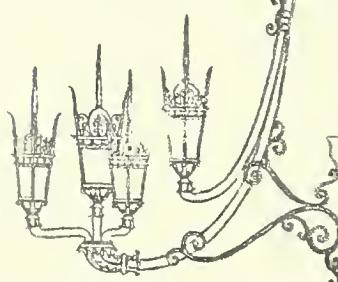


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BOSTON WATER AND SEWER COMMISSION

BILLING, TERMINATION AND APPEAL REGULATIONS

Effective January 1, 1991

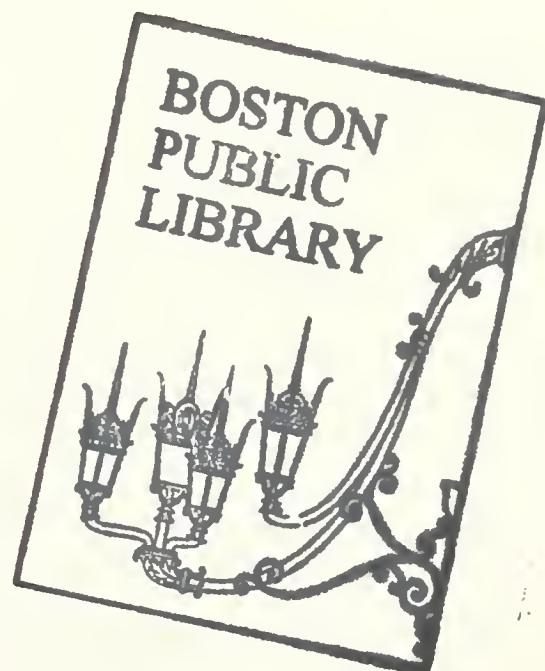




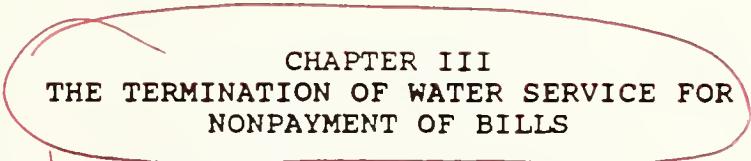
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BOSTON WATER AND SEWER COMMISSION

BILLING, TERMINATION AND APPEAL

REGULATIONS

CHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

Section 1.1 Definitions

(a) "Act" means the Boston Water and Sewer Reorganization Act, Acts of 1977, Chapter 436, of the Commonwealth of Massachusetts.

(b) "Bill" means a written statement issued by the Commission to a customer, in which is set forth the actual or estimated amount of water consumed through the period stated on the bill, all charges (as defined in subsection (c) of this section) due for water and sewerage service during such period, and such additional information as may be required under these Regulations.

(c) "Charges" means all fees, rates, rents, assessments and other charges for water, sewer, drainage or other services, facilities and commodities which are furnished or supplied by the Commission and which it is authorized under the Act to fix, revise, charge and collect.

(d) "Commission" means the Boston Water and Sewer Commission, a body politic and corporate and political subdivision of the Commonwealth of Massachusetts created under Section 3 of the Act, the powers of which are exercised by a board of three members appointed in accordance with the Act,

and includes without limitation all its departments, divisions and sections.

(e) "Customer" means the person or entity listed on the records of the Commission as the party responsible for payment of bills for charges for water and sewerage service to a building, whether or not the premises are occupied by the customer or the customer's authorized representative.

(f) "Customer plumbing" means all water service plumbing on the property of a customer, except that in the case of a building, foundation wall, areaway, or other subterranean structure located on the property line, such plumbing shall include the first eighteen inches of connecting pipe extending from the building to the service lateral of the Commission.

(g) "Delivery" means, in the case of a written communication to be transmitted to a residential tenant, the depositing of the communication

- (1) at or under the tenant's door, or
- (2) in the event that an employee of the Commission cannot enter the premises despite reasonable and appropriate efforts to do so, at or under the door of a principal entrance to the residential building.

(h) "Hearing process" means the procedures described in Chapters VIII and IX of these regulations that are available to customers or those in the position of customers to contest the Commission's bills or other actions specified in these regulations.

(i) **"Landlord customer"** means a customer who is the owner or lessor of a residential building as defined in subsection (m) of this section.

(j) **"Owner"** means the person or entity shown on the records of the City Assessors of the City of Boston as the owner of a building, or any unit thereof, to which water and sewerage service is supplied.

(k) "Reasonably in dispute," when used with respect to the amount of charges as defined in Section 1.1(c), means that portion about which persons could reasonably agree there is a question as to its validity.

(l) "Receipt," in the case of a written communication which these Regulations require to be transmitted to a customer or other person, shall be presumed to occur three days after the date of mailing or, if a written communication is posted in or on a building or delivered to a dwelling unit, on the date of posting or delivery.

(m) "Remote meter device" means and instrument for reading a water meter, located at a distance from the meter, generally outside the building being metered.

(n) **"Residential building"** means a building containing one or more dwelling units occupied by one or more residential tenants, but excluding condominiums, cooperatives, nursing homes, hotels and motels.

(o) **"Residential tenant"** means a person or group of persons, other than a customer of the Commission, occupying, as a lessee or a tenant at will or a tenant at sufferance, a

dwelling unit in a building for residential purposes and receiving water and sewer service pursuant to a rental arrangement, direct or indirect, with the owner of the building.

(p) "Special examiner" means an attorney whom the Commission has designated to hear cases relating to billing and termination of service.

(q) "Water and sewer service" means water, sewer and other services, facilities and commodities furnished or supplied by the Commission pursuant to the Act.

(r) "Water meter" means any device for measuring and recording the water consumption at a building, installed by or at the request of the Commission and used for billing by the Commission.

Section 1.2 Authority to Adopt Rules and Regulations

These Regulations are adopted pursuant to the authority granted the Commission under Section 6(a) of Chapter 436 of the Acts of 1977.

Section 1.3 Application; Non-exclusivity of Remedies

These Regulations shall apply to all billing and collection of charges for water and sewerage service, to termination of service for nonpayment of the same and to appeals from such termination. Nothing in these Regulations shall, however, be construed to limit or infringe upon the right of the Commission to pursue any other remedies available under the Act or under other applicable law for the collection and enforcement of charges for water and sewerage service.

Section 1.4 Changes in the Commission's Address and Telephone Numbers, Departments and Divisions

In the event that the Commission's address, telephone numbers, departments or divisions change, the Executive Director of the Commission is authorized to confirm all addresses, telephone numbers, departments and divisions in these Regulations and to publish the confirmed regulations. This section shall not be interpreted to authorize the Executive Director to make any alterations to these Regulations other than to addresses telephone numbers, departments and divisions.

Section 1.5 Review of Materials and Notices by Community Relations Officer.

The Commission's community relations officer shall review the form of all printed materials and notices required under these Regulations to insure that a lay person will understand them and that they will encourage customer and tenant cooperation and understanding. Where appropriate, the community relations officer may require that the Commission provide notices in languages other than English that are primary languages of substantial numbers of the Commission's customers.

CHAPTER II

BILLING AND METERING PROCEDURES

Section 2.1 Billing and Payment

(a) When due. All bills shall be due and payable upon receipt. However, no bill shall be considered delinquent and subject to delinquency charges under applicable law or these Regulations in less than 45 days from the billing date.

(b) Disputed charges. That portion of a bill reasonably in dispute shall not be considered "due" during the pendency of any complaint, investigation, hearing or appeal under these Regulations. That portion not reasonably in dispute shall be due and payable to the Commission as provided in Section 2.1(a) of these Regulations.

(c) Delinquency charges. Amounts of charges determined under Section 9.7 of these regulations to be not reasonably in dispute upon an appeal to a special examiner or to the Commission shall be subject to delinquency charges. During the pendency of any complaint, investigation, hearing or appeal under these Regulations, amounts which are reasonably in dispute but which are found to be due the Commission shall not be subject to delinquency charges. The Commission shall abate delinquency charges accrued during the hearing process and any subsequent judicial review on amounts ultimately held not to be due it from a customer.

(d) Payments; application to charges. A customer may make payments by mail or in person at the Commission's

offices. A customer may designate the account or accounts to which a payment will be applied. When a customer with more than one account fails to designate the account to which a payment is to be applied, the Commission shall credit the payment first to the account with the largest past due balance. When a payment is insufficient to cover all current charges, the Commission shall apply the payment to those charges in the following order:

- (1) water charges
- (2) sewer charges
- (3) delinquency charges
- (4) other charges

(e) Refunds; application of credit balances. In the event that a customer overpays a bill or for some other reason has a credit balance on an account, he or she may obtain upon request a prompt refund from the Commission. The customer may elect to have an overpayment or credit balance applied to a future bill. If a customer does not otherwise instruct, the Commission shall apply a credit balance to the next bill for the account and to successive bills until it is used up. Or, if the customer has more than one account, the Commission shall apply the remainder of the credit balance to the account with the largest past due balance.

(f) Payment to avoid termination. In order to forestall termination of service to a delinquent account, payment following the issuance of a final notice and demand (pursuant to Section 3.1(d)) shall be made either in cash or by a

certified or a bank cashier's check. A person making a payment in person to forestall termination shall be referred to a Finance Department representative. Upon receipt of payment, the Finance Department representative, in the presence of the person making the payment, shall issue a stop termination order, enter the order on the Commission's computer system, and present the individual with a receipt indicating the amount of the payment.

(g) Notice at cashier's window. The Commission shall post at its cashier's window a conspicuous notice informing customers and tenants that payments to avoid termination of service shall be made either in cash or by a certified or a bank cashier's check to a Finance Department representative.

(h) Payment after termination. A customer seeking restoration of water service after termination due to the customer's non-payment of charges must pay the arrearages on the account. Payment must be in cash or by a certified or bank cashier's check. Customers who qualify under the Commission's financial hardship guidelines may make arrangements with the Finance Department to pay the arrearages over time.

Section 2.2 Billing Information

(a) The face of the bill. The face of every bill rendered by the Commission to a customer shall include, but not be limited to the following information:

(1) The beginning and ending dates of the current billing period;

- (2) The number of days within which payment in full must be made in order to avoid delinquency charges on the account;
- (3) The amount of all charges remaining unpaid or unadjusted from the previous bill, labelled "Past Due";
- (4) A conspicuous statement that, in addition to any delinquency charges or other remedies of the Commission, service may be terminated if the past due amount remains unpaid;
- (5) The amount of all payments made and credits to the account since the prior bill, labelled "Payments and Adjustments;"
- (6) The amount of the current charges for water and sewer services;
- (7) A statement of the current delinquency charges due on past balances;
- (8) The amounts due for betterments or assessments;
- (9) The actual or estimated meter reading, with the notice required by Section 2.5(a)(2) in the case of an estimated reading;
- (10) A statement of the rate or rates upon which such charges are based;
- (11) The number of days between billing periods;
- (12) The total current charges; and
- (13) The total amount due.

(b) The reverse of the bill. By March 11, 1988, the reverse of a bill rendered by the Commission shall include a statement of the delinquency charges the Commission may impose in the following form:

A delinquency charge will be added for any amount not paid within 45 days after the billing date shown on the front of this bill. That charge is calculated at the daily rate of , which is equal to an annual percentage rate of .

The Commission shall insert in the blank spaces of this message the respective daily and annual delinquency charge rate adopted by the Commission.

Section 2.3 Customer Protection Notices

(a) Right to dispute bill. The following legend shall be printed on the front of all bills or written notices of proposed termination for nonpayment, in print no smaller than 1/8 inch in height, "RIGHT TO DISPUTE YOUR BILL SEE REVERSE [OR INSERT] FOR DETAILS." The following message shall be included with the bill or notice:

RIGHT TO DISPUTE YOUR BILL

Step 1

If for any reason you believe your bill is wrong, within 45 days of receipt of the bill you must write to a representative of the Administration Department of the Boston Water and Sewer Commission at the number and address shown on the front of the bill and explain the amount you believe to be in error and the reason you believe there has been an error.

Step 2.

If, when you receive the written resolution of the Commission's representative, you still consider the bill wrong or are not satisfied, you have the right to a meeting with a Finance Department representative.

Step 3

If you are still not satisfied with the resolution of your complaint, you have a right to a hearing before a special examiner appointed by the Board of Commissioners of the Boston Water and Sewer Commission and to appeal the decision of that examiner to the Board of Commissioners of the Commission. While you are participating in the dispute resolution process outlined above, your water service will not be shut off for failure to pay the portion of your bill which you are disputing. However, you must pay the part of your bill which is not reasonably in dispute. That is, the charges for the water you normally use based on your prior meter readings.

Write or call the Boston Water and Sewer Commission if you wish to request a hearing or receive further information:

Boston Water and Sewer Commission
425 Summer Street
Boston, Massachusetts 02210-1700
Attention: Administration Department--Disputes

Telephone (617) 330-9084

If you need more time to pay, call the Collection Division of the Commission at 330-9084.

(b) Translate immediately. The following message shall be printed on the face of all bills and notices in a language other than English which the Commission has determined to be a primary language of a substantial number of its customers:

"THIS BILL (NOTICE) IS IMPORTANT AND MAY AFFECT YOUR WATER SERVICE. TRANSLATE IMMEDIATELY."

(c) Attempted meter reading. By March 11, 1988, the notice of attempted meter reading required under Section 2.4(c) shall be conspicuously labeled as such and state in substance:

We were unable to take an actual reading of your water usage for the reason checked below:

Your property is not equipped with a remote meter reading device, and no one answered your door. Please call the Commission at 330-9084 to arrange for installation of a remote meter reading device at no charge to you.

Your meter or remote meter reading device is broken or missing. Please call the Commission at 330-9084 to obtain a replacement.

(d) Installation of meters and remote reading devices; special meter readings. Every other quarter beginning with the first quarter of 1987, the Commission's bills shall bear a notice printed in capital letters listing a telephone number customers may call to request the replacement or the installation of a meter with a remote reading device or a remote reading device for an existing meter and for setting up an appointment for a special meter reading.

(e) Annual notice. The Commission shall prepare a notice which explains, among other things: the Commission's meter testing policies; the purpose of meter readings; when estimated meter readings are used and how they are computed; why actual meter readings are preferable to estimates; the procedures for requesting installation of a meter or a remote reading device; the availability of refunds of credit balances on accounts; the procedures for working out payment plans if a customer has difficulty paying his or her bills; when the Commission may terminate water service to an account premises; and the procedures for disputing a bill.

(1) To whom given. The Commission shall mail a copy of this notice to all its customers at least annually.

The Commission shall also supply a copy of this notice to each new customer when an account is opened or transferred.

(2) Other publications. At least annually, the Commission shall publish a summary of the information contained in this notice in a newspaper of general circulation in the City of Boston and in The Bay State Banner, La Semana, Sampan Newspaper, and South End News.

Section 2.4 Actual Meter Readings

(a) Quarterly readings required. Except as otherwise provided in this section, by the fourth quarter of 1988 the Commission shall take an actual reading of the official Commission water meter for each account once each quarter. However, the Commission shall not take readings of privately owned water meters at any time.

(b) Notice of scheduled readings. By the fourth quarter of 1988 the Commission shall establish a quarterly meter reading schedule for every account and notify customers of it by either:

- (1) Listing on the bill the next meter reading date, or
- (2) Providing an annual schedule with the bill for the fourth quarter of the preceding year. Should the Commission choose this option, the annual schedule may indicate meter readings will occur either on four specific dates or during four specified weeks.

(c) When meter cannot be read; procedure. If the Meter Reading Division's employees are unable to gain access to a water meter for any reason other than willful refusal of permission by the customer, the Meter Reading Division shall take appropriate and reasonable measures to assure an actual reading, including but not limited to making an appointment with the customer or scheduling readings for times other than normal business hours.

(1) Notice left at account premises. In addition to the efforts to be made to gain an actual reading listed in this subsection, an employee of the Commission assigned to read meters shall complete a pre-printed notice form and leave it at the premises' principal entry.

(2) Contents of notice. The notice shall provide a space for the meter reader to record the date and time of the attempted reading. It shall also include a form on which the customer may record the meter reading. The notice shall state that failure to report the meter reading by telephone to the Meter Reading Division within forty-eight (48) hours of the date and time listed on the notice will result in an estimated bill for the quarter. The notice shall also include the substance of the statement in Section 2.3(c).

(d) Meter reading records. The Commission's employees who read meters shall record the number of each account for

which they could not obtain an actual reading and the reason it was not possible. The Commission's account records shall identify the employee who makes each meter reading. The records referred to in this subsection are hereby declared to be public records subject to the provisions of Massachusetts General Laws Chapter 66.

Section 2.5 Estimated Bills

(a) In general. In the preparation of bills for water and sewerage service, the Finance Department may rely upon an estimate of a customer's water consumption only if:

- (1) The procedure used for calculating such estimates has been approved by the Commission and made available to the public;
- (2) The bill includes on its face a clear indication that it is based upon estimated water consumption, including the conspicuous use of the word "Estimate" in close proximity to the statement of the amount due thereon; and
- (3) The Commission has not rendered an estimated bill to the customer for the billing period immediately preceding that for which the estimate is made.

(b) Accounts with remote reading devices. The Commission may not render more than one estimated bill during any calendar year for an account with a working remote reading device. Should the Commission render more than one such bill during a calendar year, the affected customer may demand a special reading. The special reading shall take place as soon

as possible thereafter but in no event more than ten (10) days after the customer's demand unless a later reading has been requested by the customer. The Commission shall then make the appropriate adjustment to the customer's bill.

(c) Exceptions. Not withstanding the provisions of Sections 2.4 and 2.5(a) and (b), the Finance Department may render an estimated bill for any billing period in which:

- (1) The official Commission meter or remote reading device is broken, absent or disconnected; or
- (2) The customer or owner has knowingly or willfully denied reasonable access to Meter Reading Division employees for the purpose of taking an actual reading; or
- (3) The customer or owner has otherwise made an actual reading unnecessarily difficult; or
- (4) Circumstances beyond the control of the Commission make an actual reading unreasonably difficult or hazardous.
- (5) The Commission's Administration Department Employees are otherwise unable to gain access to read the meter.

Section 2.6 Installation and Replacement of Water Meters

and Remote Reading Devices

The Commission maintains a program for the replacement of broken or missing water meters and the installation of remote reading devices. The Regulations Governing the Use of

the Water Distribution Facilities of the Boston Water and Sewer Commission describe that program.

Section 2.7 Meter Testing

The Commission shall provide meter tests upon request.

Note
The Commission may charge a standard fee for this service and, at the customer's option, either bill the fee to the customer's account or accept payment at the time of the test.

(a) Annual notice. The annual written notice described in Section 2.3(e) shall inform customers of the availability of this service and of the fee for it.

(b) Replaced meters. Upon a customer's request, the Commission shall test any meter which is removed and replaced. When the Commission removes a meter other than at a customer's request, it shall notify the customer of the right to have the removed meter tested. The testing shall be done in accordance with the Commission's procedures.

(1) Notice. At the time of replacement and removal of a meter, an employee of the Commission shall leave a notification card in the principal entry to the account premises. The notification card shall describe when and how the customer may request testing. The customer shall have not less than ten (10) days after delivery of the notification card to request testing.

(2) Retention of removed meters. The Commission shall retain meters removed other than at a customer's

request until the time for requesting meter testing has expired.

(c) Settings on new meters. The Commission shall set the reading on all newly installed meters as close to zero as possible.

(d) Notice of replaced meter's reading and testing. Within one (1) week of the installation of a new meter, the Commission shall mail the customer a notice stating the actual reading of the replaced meter at the time of replacement and of the results of any test of that meter. The notice shall also state that it relates to the customer's upcoming bill from the Commission and that the customer should retain it.

(e) Notice to customers requesting investigation or hearing. Each customer who requests an investigation of a bill or who enters the hearing process shall receive a written notice of the right to have the account meter tested. This notice shall also state that a special examiner may abate the meter test fee upon proof of either a customer's indigency or a hardship the fee would impose on the customer.

(f) Reports; retests; presence at tests. The Commission shall promptly record the results of meter tests and report them to the customer. The report shall state the rate of over-or under-recording, if any, as determined by the test. The report of the test results shall contain a notice to the customer that the Commission will retest the meter upon request and payment in advance of the Commission's standard meter test fee. Neither a customer nor a customer's authoriz-

ed representative may attend a meter test performed by the Commission.

(g) Retention of tested meters. The Commission shall retain a tested meter for sixty (60) days after the test. When a customer whose meter has been tested invokes the hearing process or seeks judicial review of the Commission's determination, the Commission shall retain the meter at issue until all such proceedings have terminated and the time for appeals has run.

(h) Production of tested meters. At a customer's request, the Commission shall make the replaced meter available at a hearing before the special examiner. Except for reasons beyond its control, if the Commission fails to retain the meter or to produce the meter upon request, the special examiner shall abate the disputed charges.

(i) Abatement of fees and charges. If either the initial test or a retest reveals that the tested meter was over-recording by more than 1.5 percent, the Commission shall abate and refund all meter test fees. When a meter test or retest reveals a meter to have been over-recording, the Commission shall abate charges recorded by that meter in proportion to the rate of over-recording. The Commission may further abate the amount of the charges by any other amount it believes justified. The abatement shall include delinquency charges, if any, attributable to the overcharge. If a test or retest reveals that a meter was functioning but

under-recording, the Commission shall not impose any additional charges on the account.

CHAPTER III

THE TERMINATION OF WATER SERVICE FOR NONPAYMENT OF BILLS

Section 3.1 Conditions to be Met Prior to Termination.

Except as otherwise provided in these Regulations, the Commission may terminate service for nonpayment only if:

(a) Unpaid bill. An amount shown as due on a bill remains unpaid for more than six (6) months from the billing date of the initial bill for such amount, or such longer periods as may be permitted by Section 2.1;

(b) "Past due" noted on bill. The Finance Department conspicuously noted on each successive bill that specified amounts were past due on previous bills and that the Commission may terminate service if past due amounts remained unpaid;

(c) Special request for payment. Not less than thirty-three (33) days before the date for termination of service, the Finance Department renders a special request for payment, stating its intention to terminate on a date not less than thirty (30) days after the receipt of such special request for payment;

(d) Final notice and demand. At least six (6) months after the billing date of the initial bill but not less than fifteen (15) days prior to the date for termination the Finance Department mails, postpaid by certified or registered mail, first class, to

aminer's order as to the payment of the amount not reasonably in dispute.

Section 3.2 Content of Notices

In addition to the information required by Sections 2.2 and 2.3 of these Regulations, the special request for payment and the final notice and demand shall contain the information required under Chapter IV of these Regulations with respect to termination of service to customers during serious illness.

Section 3.3 Notice of Termination to Occupied Building

When service to a building is terminated for any reason, the Commission shall notify the Boston Inspectional Services Department and shall exercise its best efforts to post a notice in a common area of the building stating the reason for the termination and the conditions under which service will be resumed. The notice shall also include a telephone number at the Commission which a customer or residential tenant may call for an explanation of the situation and his rights. If any customer or residential tenant disputes the basis for such termination, the customer or residential tenant may apply to the Commission, in accordance with Chapter VIII of these Regulations, for a determination of that issue.

Section 3.4 Termination When Amounts are in Dispute; Customer's Obligation to Pay.

In no event shall service to a customer be terminated for failure to pay a delinquent account amounting to less than

\$25.00 or for failure to pay a charge, the amount of which is reasonably in dispute and which is the subject of a pending investigation or an appeal under these Regulations. However, a customer shall be responsible for the payment of any portion of any bill which is not reasonably in dispute, and service may be terminated for failure to pay that portion of a bill.

Section 3.5 Termination Following Investigation and/or Appeal

If an investigation or an appeal is finally resolved in a manner that results in the customer being obligated to pay an amount to the Commission, the resolution of the Commission's Finance Department or the special examiner's order or the Commission's order, as appropriate, shall constitute notice of termination under subsection (a)(4) of this section. Termination of service may take place fifteen (15) days after the Commission mails and posts notice of the date of termination in accordance with the procedure outlined in subsection (a)(4) of this section.

Section 3.6 Termination for Illegal Taking Emergencies;

Nothing in this Chapter shall be construed to prevent termination for the illegal taking of water or reasons of safety, health, cooperation with civil authorities or any other reason for which the power to terminate service is specifically granted by the Act or by the General Laws.

Section 3.7 Time When Termination may be Effected

Termination of service for failure to pay a delinquent account may be effected only between the hours of eight in the forenoon and four in the afternoon, Monday through Thursday,

provided that such day is not a holiday as defined under Section 7 of Chapter 4, of the General Laws, or the day before such a holiday.

Section 3.8 Termination of Services to Residential Tenants Paying Projected Bills

Where a residential tenant has made arrangements with the Commission to pay projected bills under Section 5.6 of these Regulations, the procedures for termination specified in that section shall govern.

CHAPTER IV

TERMINATION OF SERVICE TO CUSTOMERS DURING SERIOUS ILLNESSES

Section 4.1 Serious Illness Certificate

(a) Exclusion. The Finance Department of the Commission shall not terminate or refuse to restore service to any residential building while any occupant thereof is seriously ill, as certified to the Commission by a registered physician or local board of health, and that customer or occupant subsequently certifies in accordance with subsection (d) of this section that he or she cannot afford to pay a past due bill or to pay for repairs because of financial hardship.

(b) Initial certification of serious illness.

A certification of serious illness shall be sufficient if initially made by telephone. Upon receiving telephone notification, the Finance Department shall inform the certifying physician or local board of health that a written certificate setting forth the medical information required in this section must be forwarded to the Finance Department within seven (7) days. All certifications, whether by telephone or in writing, must provide the name and address of the seriously ill person, the nature of the illness, and the office address and telephone number of the certifying physician or local board of health. Upon the Commission's receipt of a written certificate of serious illness, it shall notify the customer or occupant in writing of the conditions under

which he or she may renew the certificate and of the requirement of a certificate of financial hardship.

(c) Renewal of certificate of illness. In cases where service is continued or restored pursuant to a serious illness certificate, the customer or occupant shall renew the medical certificate monthly (every thirty (30) days), with the first renewal due one (1) month after the initial certification. However, if the illness is certified to be chronic, the Commission may direct that the renewal of the certificate shall be made quarterly (every ninety (90) days). In either case, each application for renewal must be accompanied by the Certification of Financial Hardship required under Section 4.1(d) of these Regulations. Each renewal certificate shall be forwarded to the Finance Department and directed to the attention of the Collection Manager of the Commission. As a condition for the renewal of a certification of serious illness, the Commission may require that the customer or occupant be examined by a physician designated by it. In that event, the Commission shall bear the expense of the examination.

(d) Stay of termination because of illness; certification of financial hardship. The Commission shall stay termination of service to a residential building in which an occupant is seriously ill for a period of thirty (30) days on the basis of a certification made under paragraph (b) of this section. Thereafter, any occupant or customer seeking relief under this section must also certify by letter that a financial

hardship exists. This certificate must demonstrate that the customer or residential tenant is unable to pay the charges due the Commission. The certificate shall list all steps taken to secure assistance from public or private agencies. Certifications of financial hardship shall be renewed quarterly. At its discretion, the Commission may require additional documentation of the existence of a financial hardship. When it deems necessary, the Commission may conduct an independent investigation of the financial situation of a person applying for relief under this section and may require that person to authorize the Commission to examine his or her financial records. Failure to comply with a request by the Commission for access to such records shall be grounds for the denial of an application for relief or for the denial of a renewal of a certificate.

(e) Denial of application to renew certificate; appeal.

In the event that the Finance Department denies an application or a renewal under this section, that denial may be appealed under the provisions of Chapter VIII of these Regulations.

Section 4.2 Serious Illness Notice

Any notice of termination issued pursuant to Chapter III of these Regulations shall include, or be accompanied by, a prominent written notice of the requirements of Section 4.1 in the form set forth in Section 4.6, or in such other form as shall be approved by the Commission.

Section 4.3 Shut-Off

Upon entering any building containing one or more dwelling units to shut off the service thereto, the Commission's employee responsible for termination of service, prior to such termination, shall make his or her best effort to tell the residential tenant(s) of each dwelling unit that service is to be terminated. At the same time, he or she shall present the residential tenant(s) with a serious illness notice. If any residential tenant asserts that there is a serious illness in any dwelling unit, the employee shall not shut off the service for 24 hours in order to allow the person to obtain certification of the illness in accordance with Section 4.1. When service is terminated to a building pursuant to this section at a time when any residential tenant is not present, or when entry is not allowed by an occupant, the employee shall make his or her best effort to leave a serious illness notice at or under the door of the said residential tenant's unit.

Section 4.4 Non-Compliance; Termination Appeal

Service to any customer may be terminated on account of the failure of a customer or occupant to comply substantially with the terms of Section 4.1. The right to terminate shall arise, however, only when:

- (1) The Finance Department has given the customer or occupant written notice of the proposed termination and the reason therefore, and

(2) The customer or occupant fails to request an investigation and appeal in accordance with Chapter VIII of these Regulations.

The termination notice, shall state that the customer or occupant has a right to dispute the termination by calling or writing the Commission within ten (10) calendar days of the date of the notice, and direct him or her in the following manner:

Write: Boston Water & Sewer Commission
425 Summer Street
Boston, Massachusetts 02210-1700

Attn: Collection Division

Or Call: (617) 330-9400

Section 4.5 Investigation and Appeals

Investigations and hearings under Section 4.4 shall be conducted pursuant to the provisions of Chapter VIII of these Regulations.

Section 4.6 Serious Illness Notice Forms

(a) Notice prior to termination. The following notice shall accompany or appear on all termination notices:

NOTICE
YOU HAVE A RIGHT TO WATER SERVICE
DURING SERIOUS ILLNESS

Correct!
If you or anyone presently and normally living in your home is SERIOUSLY ILL, we will not terminate your service.

YOU MUST CONTACT YOUR PHYSICIAN OR BOARD OF HEALTH. Have a physician or board of health telephone the Commission immediately at 330-9400. Within seven (7) days of the phone call, your physician or board of health must certify in writing, to the Commission, that serious illness exists.

The certificate must be renewed monthly, or quarterly if the illness has been certified to be chronic. Also each renewal must be accompanied by a certificate of financial hardship. Your failure to renew such certification of serious illness as set forth above may result in your water being shut off. You may seek assistance by calling the Commission's Collection Division at 330-9400 or by writing:

Boston Water & Sewer Commission
425 Summer Street
Boston, Massachusetts 02210-1700

Attn: Collection Division

(b) Notice at termination. When required by Section 5.3, an employee of the Commission shall make his or her best effort to give, or leave at or under the door of, the customer or residential tenant immediately prior to termination of service, the following notice:

NOTICE
YOU HAVE A RIGHT TO WATER SERVICE
DURING SERIOUS ILLNESS

If you or anyone presently and normally living in your home is SERIOUSLY ILL, we will restore your water service.

YOU MUST CONTACT YOUR PHYSICIAN
OR BOARD OF HEALTH

Have your physician or board of health telephone the Commission immediately at 330-9400. Within seven (7) days of the phone call, your physician or board of health must certify in writing, to the Commission, that serious illness exists.

The certificate must be renewed monthly, or quarterly if the illness has been certified to be chronic. Also, each renewal must be accompanied by a certificate of financial hardship. Your failure to renew such certification of serious illness as set forth above may result in your water being shut off. You may seek assistance by calling the Commission at 330-9400 or by writing:

**Boston Water and Sewer Commission
425 Summer Street
Boston, Massachusetts 02210-1700
Attn: Collection Division**

CHAPTER V

TERMINATION OF SERVICE TO ACCOUNTS AFFECTING TENANTS

Section 5.1 Termination of Service

Service to residential buildings shall not be terminated for non-payment except in accordance with this Chapter.

Section 5.2 Identification of Residential Units

Before termination of service to a residential building due to a landlord customer's nonpayment of charges, the Commission shall use its best efforts to determine the addresses, including apartment numbers, of the residential units which may be affected by termination of service.

Section 5.3 Pre-termination Notice to Landlord

Customers

In the case of a landlord customer, the special request for payment required to be sent to a customer under Section 2.5 of these Regulations prior to termination of service to a residential building shall set forth the date after which the Commission will notify residential tenants of the proposed termination.

Section 5.4 Investigation and Appeal for Landlord

Customers

The provisions of Chapter VIII of these regulations shall apply to all disputes involving nonpayment by landlord customers.

Part Section

Section 5.5 Notice to Residential Tenants

(a) Notice; when and to whom. The Commission shall give written notice of the proposed termination for non-payment accompanied by written notice of the requirements of Section 4.1 to each residential unit identified pursuant to the procedures established under Section 5.2. Such notice shall not be rendered earlier than seven (7) days following the special request for payment to the landlord customer pursuant to Section 5.3. However, such notice may be contained with the final notice and demand for payment required under Section 2.5. If the landlord customer commences a proceeding pursuant to Chapter VIII, such notice shall not be rendered until the landlord has failed to pay the amount of the bill not reasonably in dispute (under Section 9.7) or until the proceeding has been concluded, whichever is earlier. In no event shall such notice be served upon the residential units less than fifteen (15) days prior to the termination of service to the landlord customer on account of non-payment.

(b) Content of notice. The notice may be mailed or otherwise delivered to the address of each affected residential unit identified pursuant to Section 5.2 and shall contain the following information:

- (1) The date of the notice;
- (2) The date on or after which service will be terminated;
- (3) The circumstances under which service to the affected tenant may be continued, specifically

referring to the conditions set out in Section 5.6;

- (4) The projected bill mechanism described in Section 5.6 and
- (5) A telephone number at the Commission which a residential tenant or occupant may call for an explanation of his or her rights.

An employee of the Commission shall also make his or her best effort to post a notice containing the information in subparagraphs (1) through (5) of this subsection in a common area of the building where it is reasonably likely to be seen by the affected residential tenants and occupants.

Section 5.6 Rights of Residential Tenant to Continued Service

(a) Payment of projected bill. At any time before or after service is terminated on account of non-payment by the landlord customer, a residential tenant may apply to the Finance Department to have service continued or resumed. The Commission shall not terminate service, or shall resume service previously terminated, if it receives from a residential tenant proof that he or she is a residential tenant in the affected building and cash or a certified or bank check sufficient to cover both the water turn-on fee (if service has been terminated) and a projected bill for service to the residential building for a ninety (90) day period. The ninety day period shall commence on the later of

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(1) the date of the planned termination, or
(2) the date service is resumed.

(b) Tenant representative. Where more than one residential tenant of a residential building is involved, the tenants shall designate one of the following as their representative: one of their number; an attorney at law admitted to practice in the Commonwealth of Massachusetts; or an agency which subsidizes the rent of a tenant or tenants in that building and pays such subsidy directly to the landlord. The tenant representative upon signing a form approved by the Commission shall thereafter receive communication from the Commission and shall arrange for payments to the Commission, either in person, or by first-class mail, postage pre-paid. The Commission shall send to the tenant representative by first-class mail, postage pre-paid, any subsequent 90-day estimated bills prior to a termination notice. The designated "tenant representative" shall not be construed to make the tenant representative personally liable for any amount due the Commission on a bill. As used in this section, the term "tenant representative" shall include groups of tenants.

(c) Subsequent payments of projected bills. The Finance Department shall notify a residential tenant or a residential tenant representative of the total amount of the projected bill for the second and each succeeding period of ninety (90) days. However, the Commission will not terminate water service to premises whose residential tenants pay each successive projected bill in a timely fashion. If a residen-

tial tenant fails to pay a projected bill before the start of the period for which the bill is projected, the Commission may terminate service in the manner prescribed in subsection (d) of this section.

(d) Termination. If a residential tenant fails to pay an estimated bill (as required under subsection (c) of this section), the Commission may terminate service upon fifteen (15) days written notice, sent or delivered to each residential unit identified in accordance with the provisions of Section 5.1. The Finance Department need not repeat any notices previously given in accordance with Section 5.5 of these Regulations. The fifteen (15) day notice shall state:

- (1) The date on or after which service will be terminated;
- (2) The amount due, which shall include the arrearage on any earlier projected bill due from residential tenants;
- (3) A telephone number at the Commission which a residential tenant may call for an explanation of his rights; and
- (4) The right of a residential tenant, within seven (7) days of the notice, to invoke the procedure for investigation and hearing set forth in Chapter VIII.

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The payment of the amount due on the estimated bill and all arrearages or past due 90 day estimated bills will stay termination for that 90 day period.

(e) Investigation and Appeal. Residential tenants shall be considered customers for the purpose of disputing any matter relating to a projected bill in accordance with the provisions of Chapters VIII through X of these Regulations.

CHAPTER VI

TERMINATION OF SERVICE TO ELDERLY PERSONS

Section 6.1 Identifying Elderly Persons

The Executive Director of the Commission shall promptly devise procedures and methods reasonably designed to identify, before termination of service for non-payment, accounts affecting buildings in which all residents are 65 years of age or older. Such procedures shall be submitted to the Commission in writing for review, modification, and approval.

Section 6.2 Third Party Notification

If a customer who is a member of a household of which all members are 65 years of age or older so desires, the Finance Department shall provide to a third person designated by such customer notification of all past due bills, notices of termination of service, and notice of right to a hearing at the Commission. In no event shall the third party so notified be liable for the account of the customer. The Executive Director of the Commission shall promptly devise procedures reasonably designed to provide a voluntary system of third party notification for all customers who are members of households of which all members are 65 years of age or older. Such procedures shall be submitted in writing to the Commission for review, modification and approval.

Section 6.3 Termination Notice

Service may be terminated to a building in which all residents are 65 years of age or older only after the Execu-

tive Director grants written approval of such termination upon application of the Finance Department to the Executive Director. Concurrently with consideration of such termination by the Executive Director, the Finance Department shall give written notice to the Department of Elder Affairs (or any agency designated by the Department of Elder Affairs for such purposes); to any third person to be notified pursuant to Section 6.2; and to the residents of such building. Such written notice shall state that an application to terminate has been made to the Commission and shall set forth the rights of the residents of the affected building to invoke the investigation and appeal procedures set forth in Chapter VIII of these Regulations.

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The notices required by this section shall contain language in accordance with Section 6.5 and be in such form as shall be approved by the Commission prior to its use.

Section 6.4 Investigation Prior to Termination The Executive Director shall not approve an application for termination of service to a building in which all of the occupants are 65 years of age or older unless the following facts have been established in the course of an investigation pursuant to Chapter VIII of these Regulations:

(a) The occupants of the building, the Department of Elder Affairs (or any agency designated by the Department of Elder Affairs for such purposes), and any third person designated pursuant to Section 6.2 have received proper notification of termination pursuant to these Regulations;

(b) The Finance Department has in good faith attempted to secure payment by reasonable means other than termination; and

(c) The Finance Department has not refused to accept any monthly installment payment agreement which is just and equitable.

(d) The Executive Director has informed the Commissioners of his decision and they give their assent to his decision.

The scope of the investigation need not be limited to the facts cited above, but may include any matters relating to a billing dispute brought to the attention of the Commission.

Section 6.5 Special Information Notice

All second requests for payment, notices of termination of service, notices of right to a hearing at the Commission and other written communications by the Commission to a residential customer or a landlord customer regarding bills for service shall contain on their face or include the following notice:

If all residents in your house or building are 65 years of age or older, your service will not be terminated for failure to pay a past due bill without the formal approval of the Boston Water and Sewer Commission. If you cannot pay your bill in full, you may be able to work out a payment plan with the Finance Department of the Commission. You have a right to a hearing at the Commission before termination. If you have any questions or want further information, call the Commission at 330-9400.

Section 6.6 Termination

Upon entering any building containing one or more dwelling units to terminate the service to any customer therein and before shutting off service, the employee of the Commission responsible for termination of service shall make his or her best efforts to give, or leave under the door of, each customer or residential tenant, a copy of the notice described in Section 6.5. If the employee is told that all of the occupants of the building are 65 years of age or older, service shall not be terminated unless or until termination has been approved by the Executive Director, with the knowledge and assent of the Board of Commissioners of the Commission.

CHAPTER VII
PROCEDURES FOR TERMINATION OF WATER
SERVICE
FOR REASONS OTHER THAN NON-PAYMENT OF
BILL

Section 7.1 Scope of this Chapter

(a) Application and definitions. This Chapter applies to cases in which the Commission has discovered the existence of any of the following conditions:

- (1) Streamlined pipe. Customer plumbing which does not permit proper installation of a water meter, whether due to insufficient access, inadequate connecting area or pipes, or otherwise.
- (2) Bad plumbing. Customer plumbing which lacks a functioning shut-off valve or which in the judgment of the Commission has deteriorated to the extent that the installation or repair of a water meter could damage such plumbing.
- (3) Illegal tap. Any unmetered connection of customer plumbing to a water main, service lateral or fire pipe.
- (4) Refusal of access. Any refusal by a customer, owner or tenant to permit access by the Commission to customer plumbing for the purposes of inspecting a meter connection or for the purposes of reading, inspecting or installing a meter including a meter

with a remote interface or other Commission equipment related thereto (including any refusal to provide clear access to such connection, meter or other equipment).

(5) Leak up to owner (LUTO). A leak in a water service pipe on an owner's property which it is the owner's responsibility to repair.

(6) Customer plumbing emergency. Any leak or malfunction in customer plumbing, including firepipe, sanitary sewers or storm drains, which in the opinion of the Commission requires for reasons of public safety an interruption of service to one or more customers.

(7) Violation of Water Regulations or Sewer Regulations. Any violation of water regulations or sewer regulations of the Commission on the part of the customer is found to exist on the customer's property, in accordance with those regulations.

(b) Non-exclusivity of remedies. Nothing in this Chapter shall be construed to limit or infringe upon the right of the Commission to

(1) Make, without notice, such temporary interruptions in water and sewerage service as it deems necessary on a routine or emergency basis for restoration, repair or replacement of the water works system and the sewerage works system as defined in the Act, or

(2) Pursue its remedies for the unauthorized use or diversion of water or for damage to the Commission's property under other regulations promulgated by the Commission, the Act or other applicable laws.

Section 7.2 Notice Periods Prior to Termination The following notice periods shall apply to terminations under this chapter:

<u>Reason for Termination</u>	<u>Notice to Cure Condition</u>	<u>Final Notice and Demand</u>	<u>Minimum Time From Receipt of First Notice to Termination</u>
(1) Streamlined Pipe	10 days	24 hours	11 days
(2) Bad Plumbing	15 days	24 hours	16 days
(3) Illegal Tap	5 days	24 hours	6 days
(4) Refusal	5 days	24 hours	6 days
(5) Leak Up to Owner	10 days	24 hours	11 days
(6) Customer Plumbing Emergency	Such reasonable period as in the judgment of the Commission may be practicable	None	None

In the event that a customer pursues his or her rights to a resolution or an appeal under Section 7.6, the notice and termination periods prescribed in that section shall control.

Section 7.3 Inspection, Notification and Termination

(a) Initial inspection. Upon receipt of notification that one of the conditions set forth in Section 7.1(a) exists on a customer's premises, the Commission shall inspect the premises and verify the existence of the condition.

(b) Notice to cure condition. When the Commission determines after an inspection that a condition specified in Section 7.1(a) exists or either is denied access or is unable, after reasonable efforts, to secure access to the premises for the purpose of verifying the condition, the Commission shall forthwith:

- (1) post on the premises,
- (2) mail to the customer at his address as shown on the records of the Commission,
- (3) deliver, when possible, to each unit of a residential building that the Commission has determined may be affected by the proposed termination, and
- (4) mail on the same day by certified or registered mail, first class, to the owner of the premises, if other than the customer, at his address as shown on the records of the assessor of the City of Boston, a notice to cure condition as described in Section 7.5(a) stating that service will be terminated if the condition is not corrected within the period of time indicated under the heading "Minimum Time from Receipt of First Notice to Termination" in the chart in Section 7.2.

In the case of residential buildings, tenants receiving a notice to cure condition shall be identified in accordance with Section 5.1 of these regulations.

(c) Final notice and demand. After the expiration of the period specified in the Notice to Cure Condition, a Commission employee shall return to the premises in order to

determine whether the condition has been corrected. If the condition has not been corrected or if the Commission employee is unable to obtain access to the premises, the Commission shall forthwith

- (1) post on the premises, and
- (2) deliver, when possible, to each unit of a residential building that the Commission has determined may be affected by the proposed termination,

a final notice and demand. The final notice and demand shall state that if the condition is not corrected within twenty-four hours of the date on which it was posted or delivered, the Commission will terminate water service to the premises.

(d) Termination. Upon the expiration of the twenty-four hour period specified in subsection (c) of this Section, a Commission employee shall return to the premises to determine whether the condition has been corrected. If the condition has not been corrected or if the employee is unable to obtain access to the premises, service shall be terminated.

(e) Customer plumbing emergency notices. Notwithstanding any other provisions of these regulations, in the event of a customer plumbing emergency, the Commission shall be required to give only such notice prior to termination as it deems practicable in the particular circumstances. After termination because of a customer plumbing emergency, the Commission shall provide the notice required in Section 7.5(d) to those persons specified in subsection (b) of this Section.

(f) Post-termination notices. In the event that the notices called for in subsections (b) and (c) of this Section cannot be given prior to termination, the Commission shall, as soon as practicable following termination, notify the persons described in subsection (b) of this Section. This notice shall contain all applicable information required to be included in a notice given pursuant to subsection (b) and shall be transmitted as specified in that subsection.

Section 7.4 Termination of Service to Accounts Affecting Tenants

Service to any landlord customer shall not be terminated for any reason set forth in Section 7.4(a) except in accordance with this Section.

(a) Pre-termination notice to landlord customers.

Every notice mailed to a landlord customer pursuant to Section 7.3(b) shall state that the Commission is simultaneously notifying tenants of the proposed termination.

(b) Notice to tenants. As required by Section 7.3(b) the Commission shall deliver, when possible, written notice of the proposed termination to each unit of a residential building that the Commission has determined may be affected by such termination. In addition to the information required under Section 7.5, the notice shall contain:

(1) A statement of the circumstances under which service to the affected tenant may be continued, specifically referring to the rights set forth in Section 7.8(c); and

(2) A telephone number at the Commission which a tenant may call for an explanation of his rights.

A Commission employee shall also post this information in a place on the premises where the affected tenants or occupants are reasonably likely to see it.

(c) Rights of tenants to continued service. At any time before or after service is terminated for any reason set forth in Section 7.1(a), tenants may apply to the Commission to have service continued or resumed. The Commission may postpone termination or resume service previously terminated if it receives from the tenants assurances satisfactory to the Commission that the condition will be corrected. Tenants shall be considered customers for the purposes of Section 7.6 and shall be entitled to dispute any matter relating to a proposed termination in accordance with its provisions. The special examiner may consolidate any or all appeals by a landlord customer, an owner or a tenant with respect to the same condition or account.

(d) Post-termination notices to the Inspectional Services Department and landlord. When service to an occupied residential building is terminated for any reason, the Commission shall notify the Boston Inspectional Services Department, in advance if feasible, and shall post on the premises and send by certified or registered, first class mail, to the customer at his address as shown on the records of the Commission a notice stating the reason for the termination and the conditions under which service will be resumed.

On the same day the Commission shall send by certified or registered, first class mail, a copy of such notice to the owner of the premises, if other than the customer, at his address as shown on the records of the assessor of the City of Boston. The notices provided under this Section shall conform to the requirements of Section 7.5(d).

Section 7.5 Information to be Contained in Notices

(a) Notice to cure condition. Every notice posted, mailed or delivered pursuant to Section 7.3(b) (other than a notice of termination by reason of customer plumbing emergency) shall be in writing and shall contain:

- (1) A description of the condition for which service is to be terminated;
- (2) The date and approximate time at which an employee of the Commission will return to determine whether the condition has been corrected;
- (3) The proposed date of termination;
- (4) The information with respect to terminations of service to customers during serious illness and to elderly persons required under Sections 7.7 and 7.8, respectively;
- (5) On the face of the notice the following message in a language other than English which the Commission has determined to be the primary language of a substantial number of its customers: "THIS NOTICE IS IMPORTANT. TRANSLATE IMMEDIATELY."

- (6) On the face of the notice, in print no smaller than 1/8 inch in height, the following legend: "RIGHT TO HEARING--SEE REVERSE [or BELOW or INSERT] FOR DETAILS."
- (7) On the face or reverse of, or inserted with, the notice, the notice of the right to a review and to a hearing set forth in Section 7.5.

(b) Final notice and demand. Every notice posted or delivered pursuant to Section 7.3(c) (other than notice of termination by reason of customer plumbing emergency) shall be in writing and shall contain:

- (1) A description of the condition for which service is to be terminated and the proposed date of termination;
- (2) A final demand stating that if the condition is not corrected within twenty-four hours of receipt of the notice, the Commission will terminate water service to the premises;
- (3) The information with respect to terminations of service to elderly persons and to customers during serious illness required under Sections 7.7 and 7.8, respectively;
- (4) On the face of the notice the following message in a language other than English which the Commission has determined to be the primary language of a substantial number of its customers: "THIS NOTICE IS IMPORTANT. TRANSLATE IMMEDIATELY."

(5) On the face of the notice, in print no smaller than 1/8 inch in height, the following legend: "RIGHT TO HEARING--SEE REVERSE [or BELOW or INSERT] FOR DETAILS."

(6) On or accompanying the notice, the notice of the right to a review and to a hearing set forth in Section 7.5(c).

(c) Notice of right to review and to hearing; pre-termination notices. Every notice posted or delivered pursuant to Section 7.3(b) and (c) shall contain, or be accompanied by, the following notice:

RIGHT TO HEARING

If you need more time to correct a condition referred to in this notice, contact immediately the Commission's Meter-Reading Division at 423-6895.

If for any reason you believe this notice is in error, you have a right to have it investigated by the Meter Reading Division. Contact immediately the Commission's Meter-Reading Division at 423-6895.

If you do not seek more time to correct the condition or if you do not seek an investigation of the notice before the proposed date of termination stated on the face of this notice, your service will be terminated. If you seek a review of the notice, you will receive a written resolution from the Manager of the Meter Reading Division. If you are dissatisfied with the Manager's resolution, you may request a hearing before a special examiner appointed by the Boston Water and Sewer Commission. Your request for a hearing must be made within seven (7) days of receipt of the Manager's resolution and must be made in writing on a form supplied by the Commission. If you wish to request a hearing or receive further information, contact:

Boston Water and Sewer Commission
425 Summer Street
Boston, Massachusetts 02210-1700

Attn: Special Examiner
Phone: (617) 330-9400

(d) Customer plumbing emergency and post-termination notices. Every customer plumbing emergency notice or post-termination notice posted, mailed or delivered pursuant to Section 7.3(e) shall be in writing and shall contain:

- (1) A description of the condition for which service has been terminated;
- (2) The date of termination;
- (3) The information with respect to terminations of service to customers during serious illness and to elderly persons required under Sections 7.7 and 7.8, respectively;
- (4) On the face of the notice the following message in a language other than English which the Commission has determined to be the primary language of a substantial number of its customers: "THIS NOTICE IS IMPORTANT. TRANSLATE IMMEDIATELY."
- (5) On the face of the notice, in print no smaller than 1/8 inch in height, the following legend: "RIGHT TO HEARING--SEE REVERSE [or BELOW or INSERT] FOR DETAILS."
- (6) On the face or reverse of or inserted with the notice, the following message according to the form and manner set out below:

RIGHT TO HEARING

If you wish to dispute the basis for the termination of service referred to in this notice, you have the right to a review by the Manager of the Meter-Read-

ing Division. To obtain this review, you must call or write the Manager within fourteen (14) days of the date of the termination and request the review. If you are not satisfied with the Manager's resolution of this matter, you have a right to a hearing before a special examiner appointed by the Boston Water and Sewer Commission and to appeal the special examiner's decision to the Commission. To request a review or more information, contact immediately:

Boston Water & Sewer Commission
400 Frontage Road
Boston, Massachusetts 02118

Attention: Manager, Meter-Reading Division

Telephone (617) 423-6985

(e) Notices after termination of service to a residential building. Every notice posted or mailed pursuant to Section 7.4(d) shall contain:

- (1) A description of the condition for which service has been terminated;
- (2) The date of such termination;
- (3) The information with respect to terminations of service to customers during serious illness and to elderly persons required under Sections 7.7 and 7.8, respectively;
- (4) On the face of the notice the following message in a language other than English which the Commission has determined to be the primary language of a substantial number of its customers: "THIS NOTICE IS IMPORTANT. TRANSLATE IMMEDIATELY."
- (5) A statement of the circumstances under which service may be resumed and, in the case of termination of service to a residential building, a statement

of tenant rights as set forth in Section 7.4(c) and 7.5(c).

- (6) The telephone number at the Commission which a customer, owner or tenant may call for an explanation of the situation and of his or her rights.
- (7) On the face of the notice, in print no smaller than 1/8 inch in height, the following legend: "RIGHT TO HEARING--SEE REVERSE [or BELOW or INSERT] FOR DETAILS."
- (8) On the face or reverse of, or inserted with, the notice, the following message according to the form and manner set out below:

RIGHT TO HEARING

If you wish to dispute the basis for the termination of service referred to in this notice, you have the right to a review by the Manager of the Meter-Reading Division. To obtain this review, you must call or write the Manager within fourteen (14) days of the date of the termination and request the review. If you are not satisfied with the Manager's resolution of this matter, you have a right to a hearing before a special examiner appointed by the Boston Water and Sewer Commission and to appeal the special examiner's decision to the Commission. To request a review or more information, contact immediately:

Boston Water & Sewer Commission
400 Frontage Road
Boston, Massachusetts 02127

Attention: Manager, Meter-Reading Division
Telephone (617) 423-6895

Section 7.6 Stays, Investigations and Appeals

The procedures described in this Section shall apply when a customer who received a notice under Section 7.3 of these

Regulations requires more time to cure a condition or disputes the validity of an allegation contained in it. These procedures shall also apply to any dispute arising out of a termination of service under this Chapter.

(a) Pre-termination investigation. A customer, who receives a notice to cure condition or a final notice and demand, may need more time to cure the condition or may dispute the allegations of the notice. Such a customer may stay termination by requesting an investigation by the Manager of the Commission's Meter-Reading Division. However, termination will not be stayed in cases involving a customer plumbing emergency or a condition that the Manager determines immediately threatens public safety.

(1) Resolution. The Manager of the Meter-Reading Division shall investigate the notice and, upon completion of his investigation, mail his or her resolution of the matter to the customer.

(2) New termination date; notices. If the Manager determines that termination is required, the resolution shall include a new termination date which shall be not less than seven (7) days following receipt. The resolution shall also include, or be accompanied by, a copy of the notice of the customer's right to a hearing set forth in Section 7.5(d)(6) and/or Section 7.5(e) (8), where applicable, a copy of the Commission's form for requesting a hearing required by Section 8.5.

(3) Time for appeal. A customer wishing to appeal the Manager's resolution must request a hearing before a special examiner on the form required by Section 8.5 within seven (7) days of receipt of the resolution.

(b) Post-termination review. Within fourteen (14) days following termination, a customer may seek a review of the matter by the Manager of the Meter-Reading Division.

(1) Resolution. The Manager of the Meter-Reading Division shall as soon as possible investigate and, upon completion of his investigation, mail the customer his or her resolution of the matter. The resolution shall also include, or be accompanied by, a copy of the notice of the customer's right to a hearing set forth in Section 7.5(d) (6) and a copy of the Commission's form for requesting a hearing required by Section 8.5.

(2) Time for appeal. A customer wishing to appeal the Manager's resolution must request a hearing before a special examiner on the form prescribed by Section 8.5 within fourteen (14) days following receipt of the resolution.

(3) No temporary resumptions of service. The filing of a request for a review or a hearing after termination will not by itself result in the restoration of service pending the outcome of the review or the hearing before a special examiner.

(c) Hearings before a special examiner; appeals to Board. Hearings before a special examiner and appeals to the Board of Commissioners of matters arising under this Chapter shall be conducted in accordance with Chapter IX of these Regulations. The Commission shall give priority on the special examiners' docket to post-termination appeals under this Section and shall expedite all such appeals.

Section 7.7 Termination of Service to Customers during Serious Illness

Except in the event of a customer plumbing emergency, residents of an occupied building who are suffering from a serious illness may stay termination of service under this Chapter.

(a) Notice to Commission. In order to stay termination, an occupant must notify the Commission of his or her condition before the time stated on the notice as the proposed termination date. The notification shall consist of a telephone call to the Manager of the Meter Reading Division. Within seven (7) days of notifying the Commission of his or her condition, the occupant must supply the Commission with a serious illness certificate as described in Section 4.1(b) of these Regulations. Failure to supply the serious illness certificate will result in immediate termination of service.

(b) Duration of stay. The purpose of the stay of termination permitted by this Section is to allow the customer sufficient time to arrange to have the condition cured without termination of service. When, in the judgment of the Manager

of the Meter Reading Division, sufficient time has passed to correct the condition or the condition poses a threat to public safety, he or she may reinstitute the termination by repeating the procedures required by Section 7.3 of these Regulations. The affected occupant may request a hearing before a special examiner pursuant to Section 7.5 of these Regulations.

(c) Notices by Commission. All notices rendered by the Commission under Sections 7.3(b) and (c) shall contain a notice of the right to continued service in the event of an occupant's serious illness.

Section 7.8 Termination of Service to Elderly Persons

In taking any action under Chapter VII (other than a termination by reason of a customer plumbing emergency), the Commission shall comply with the notice and other applicable requirements of Chapter VI, except that all actions required to be taken by the Finance Department under Chapter VI shall be taken by the Meter-Reading Division.

Section 7.9 Resumption of Service

At any time following termination, upon receiving satisfactory proof that a condition that required termination has been cured, the Manager of the Meter-Reading Division shall order service restored to the account.

Chapter VIII

INVESTIGATION AND RESOLUTION OF BILLING DISPUTES

Section 8.1 Application

The procedure described in this Chapter shall apply to any bill disputed by a customer and to any dispute as to termination of service for non-payment of a bill.

Section 8.2 Parties Defined

As used in Chapters VIII, IX, and X, "party" and "parties" mean the participant(s) in an investigation by the Administration Department or a hearing before a special examiner. These terms include the Commission and any person who has a right under these Regulations to appeal a decision of any department of the Commission regarding billing and termination for non-payment of charges for water and sewerage service. Any party may appear on his/her own behalf or with or by legal counsel.

Section 8.3 Notice of Dispute; Procedure; Resolution

(a) Resolution procedure. A party having a right to an investigation under these Regulations shall notify the Administration Department of a dispute by telephone, mail or in person. The matter shall be referred initially to a Finance Department representative, an employee of the Commission working in that department assigned to investigate billing complaints. The Administration Department representative shall make his or her best effort to resolve the

dispute and shall notify the party of that resolution in accordance with Section 8.4 of these Regulations.

(b) Conference. A party receiving a notice of resolution may request a conference with the Administration Department representative who signed the notice of resolution for the purpose of clarifying the resolution or explaining circumstances relating to the dispute. The customer shall notify the Administration Department representative of his or her request for a conference within seven (7) days of receipt of the notice of resolution. The Administration Department representative shall schedule the conference for the earliest possible mutually convenient date, but in no event shall the conference take place more than two (2) weeks after the date on which the party made the request.

(c) Binding effect of resolution. An Administration Department resolution of a dispute as amended by a special examiner, the Board or the courts shall bind the parties as to the amounts due the Commission for the periods in question. Once an Administration Department resolution has become final, a customer seeking a resolution of a dispute involving the same account may only contest those bills rendered after the latest bill covered by the prior resolution.

Section 8.4 Notice of Resolution; Right of Appeal

The party initiating an investigation shall be notified in writing as to the Administration Department Representative's resolution of the disputed matter within thirty (30) days of

initial receipt of the complaint. Such notification shall include or be accompanied by the following statement:

If you consider this resolution to be inaccurate in any respect, you may request an informal conference by calling or writing the undersigned within seven (7) days after receipt of this notice. If you do not choose to have a conference or if your dispute is not resolved at the conference, you have a right to a formal hearing, provided that you request such a hearing on a form available from the Commission within seven (7) days of receipt of this notice. If you do not choose to exercise your right to a conference or to a hearing, this resolution of your dispute will become final and you may not again contest these charges later.

To obtain the hearing form, write: Boston Water and Sewer Commission, 425 Summer Street, Boston, MA 02210-1700, Attn: Special Examiner. Or, call (617) 330-9400.

If you feel that your water meter is registering inaccurately, you may request a meter test by calling the Customer Service Division at 330-9084 for more information.

If you would like to request a conference or if you have any questions, please call 330-9400.

Section 8.5 Appeals from Administration Department

Resolutions

A customer may appeal the Administration Department's resolution to a special examiner. A customer shall notify the Commission that he or she wishes to appeal within seven days of receipt of a written notice of resolution or within seven days following a conference held under the provisions of Section 8.3(b) of these Regulations, whichever is later. The notice of appeal shall be on a form prescribed and supplied by the Commission. The form shall include a notice describing how the appellant may obtain a copy of these Regulations.

Upon the filing of a notice of appeal, the Commission shall assign a special examiner to conduct a hearing. Such hearing shall be conducted in accordance with the procedures set forth in Chapter IX.

CHAPTER IX
HEARINGS BEFORE SPECIAL EXAMINERS

Section 9.1 Application of This Chapter

The rules set forth in this Chapter shall govern all hearings held before special examiners for the Commission.

Section 9.2 Statement of Basis for Appeal

(a) Time for filing; contents. Within seven days following a party's notice to the Commission that the party wishes to appeal the resolution of the Administration Department, the party shall file with the Commission a clear and concise written statement of the grounds for the appeal. This statement shall be made on a form prescribed by the Commission, which the customer may obtain at the offices of the Commission. The party shall file a separate statement for each account at issue. On the form, the party shall provide the following information:

- (1) The name, address, and telephone number of the party bringing the appeal;
- (2) If the party filing the statement is represented by counsel, the name, address, and business telephone number of each such attorney;
- (3) A short statement of the matter upon which the appeal is based and the party's objections to the decision or resolution of the Administration Department representative; and

(4) The amount of the charges the party believes are in dispute.

(b) Failure to file. The Commission may dismiss a party's appeal for failure to file, or for failure to file in proper form, the statement of the basis for appeal required by this section.

Section 9.3 Request for New Meter

Before or simultaneously with the filing of a statement of the basis for appeal, a customer may file a written request that the Commission replace the account meter. If the account meter either

- (1) is missing, or
- (2) is obviously broken or inoperative, or
- (3) has not been replaced during the five years preceding the request,

the Commission shall replace the meter. Sections 2.6 and 2.7 of these Regulations govern replacement and testing of meters.

Section 9.4 Scheduling of Hearings; Continuances; Appearances

(a) Notice of hearing. The special examiner shall give written notice of a scheduled hearing to:

- (1) All parties (either directly or to their counsel);
- (2) The Administration Department representative;
- (3) The department of the Commission whose action is in dispute;

- 4) Others who have made a written request for notice of a hearing in a particular matter; and
- (5) Such other persons as deemed necessary or appropriate by the Commission.

Such notice shall include, but need not be limited to, the time, date, place and nature of the hearing. Notice of a hearing shall be mailed at least seven (7) days before the day on which the hearing is to be held.

(b) Order of hearings. Except as otherwise provided in these Regulations, the Commission shall schedule hearings in the general order in which it receives requests for hearings. However, a customer selling an account premises and who disputes a bill on that account shall receive, upon request, an expedited hearing. Also, in accordance with Section 7.6(c), the Commission shall give priority to post-termination appeals arising under Chapter VII.

(c) Consolidation. The Special Examiner may consolidate any or all appeals by a landlord customer, an owner, or a residential tenant with respect to the same account or condition.

(d) Hearings after certain meter replacements. If the Commission has replaced a meter pursuant to Section 9.3, the Commission shall not schedule the matter to be heard until two (2) months after the meter's installation, unless the customer requests an earlier date.

(1) Meter-reading before hearing. The Commission shall make its best effort to obtain a reading from the

new meter at least one week before the scheduled hearing. The Commission's inability to obtain a reading due to the customer's action or inaction shall not be cause for any further delay in the hearing. At the hearing, the Commission shall present evidence of the meter reading and of the amount of water usage since installation.

- (2) Notice to customer. Immediately following the meter reading, the Commission shall notify the customer of the usage recorded since installation. Failure to notify the customer or the customer's non-receipt of the notice shall not be cause for a continuance of the hearing.
- (3) Discrepancies in readings. If the customer has not received notice of the pre-hearing reading and if the reading and usage described by the Commission at the hearing differ from the customer's evidence concerning usage by an amount that cannot be reasonably accounted for by the lapse of time between the Commission's reading and the customer's, the customer shall be entitled to a continuance of one (1) week in order to attempt to resolve the difference. However, a customer who received notice of the pre-hearing reading one week or more before the hearing is not entitled to a continuance for this purpose.

(e) Continuance. The special examiner may grant a continuance upon a showing of good cause by a party. The special examiner may assess reasonable costs against a party requesting a continuance in the absence of a showing of good cause or when the request forms part of a pattern of abusive delays, particularly if the party requests the continuance on the date of the hearing.

(f) Dismissal for failure to appear or for abusive continuances. If a party fails to appear for a hearing after notice has been duly served on the party or on his or her representative or counsel, the special examiner may order dismissal of the appeal or find against the party by default. The special examiner may also dismiss an appeal if the customer abusively seeks repeated continuances.

(1) Reinstatement. For good cause shown and upon a motion made by the affected party within fifteen (15) days of receipt by the party of the special examiner's order of dismissal or default, the special examiner may reinstate the appeal.

(2) Notice. Any order issued under this subsection shall contain both a notice of the party's right to seek reinstatement or withdrawal of the finding and the notice prescribed in Section 13.5(m).

Section 9.5 The Conduct of Hearings

(a) Presiding officer. The hearing shall be conducted by a special examiner, who shall act as presiding officer.

The special examiner shall be a member in good standing of the Massachusetts Bar and shall not be an employee of the Commission. The Commission shall maintain a list of persons it has approved for appointment as special examiners and a list of the hearings to which they have been assigned. The Commission shall make assignments from the list in a regular rotation of its devising. The list of special examiners and the list of hearings (and their dates) to which the Commission has assigned them shall be maintained as public records.

(b) Presence of staff members. The names of the members of the Commission's technical staff present at a hearing, including investigators, hearing officers, and others who have been assigned to work on, or to assist in the proceeding, shall be noted in the record.

(c) Deportment. All parties, counsel, witnesses, and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of The Commonwealth of Massachusetts. Where such decorum is not observed, the special examiner may take such action as he or she deems appropriate.

(d) Evidence; witnesses; discovery. Each party shall have the right to call and examine witnesses under oath, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence. At any time before or during a hearing, the special examiner may, upon his or her own motion or that of a party, require a party to produce documents relevant to the appeal. Except upon a showing that

it is necessary for the expeditious decision of the matter at issue, discovery shall be limited to the production of documents. Where the special examiner finds another type of discovery necessary, he or she may order any form of discovery permitted by the Massachusetts Rules of Civil Procedure. However, it is the Commission's express intention to limit discovery to the production of documents except in those situations where there is no feasible substitute for another form of discovery.

(e) Evidence; procedure. The special examiner shall make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the hearing.

The special examiner need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. The special examiner may exclude evidence, although it may be relevant, if its probative value is outweighed by the danger of unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(f) Official notice. The special examiner may take official notice of such matters as might be judicially noticed by the courts of the United States or of the Commonwealth of Massachusetts.

(g) Burden of proof; order of presentation. In a hearing on an appeal from any resolution of a customer dispute specified as appealable under these Regulations, the resolu-

tion shall be presumed to be correct. The burden to prove otherwise shall rest on the party challenging that resolution. However, when a party following the issuance of the Administration Department's resolution has requested a meter test pursuant to Section 2.7 or a new meter pursuant to Section 9.3, the results of the test or of the reading of the new meter shall, in the absence of clear and convincing evidence to the contrary, be conclusive. If an appellant, at the end of his or her case, has failed to establish substantial evidence indicating that the resolution is reasonably in dispute, the special examiner, on his or her own motion or on the motion of any other party, may dismiss the appeal. The party filing the statement of the basis for appeal prescribed in Section 9.2 of these Regulations shall present its case first. The special examiner shall determine the order of presentation by any other parties to the appeal. The special examiner may permit rebuttal to the extent he or she deems proper and relevant.

(h) Additional evidence. At any stage of the hearing, the special examiner may call for further evidence upon any issue, and require such evidence to be presented by the party or parties concerned or by the staff counsel, either at that hearing or adjournments thereof. At the hearing, the special examiner may authorize any party to file specific documentary evidence as a part of the record within a specified time. If the special examiner permits the submission for the record of additional documentary evidence following completion of the

hearing, the party submitting the document shall, at the same time, serve copies on all parties to the hearing. Service shall be upon the parties or the attorneys for the parties. Any party wishing to file material in rebuttal to the submission shall submit it to the special examiner and serve it on the other parties within seven (7) days of receipt of the submission.

(i) Record; transcript. Unless the special examiner otherwise orders, the hearing shall be recorded on a sound reproduction machine exclusively provided by the Commission. The Commission will preserve tapes of hearings for a period of one (1) year after the date a decision becomes final, as defined in Sections 10.3 and 10.5(g).

A party requesting a transcript of the hearing shall be required to pay the reasonable cost of preparing it before a copy is made available to that party. The Commission will bear the expense of preparing a transcript when a customer demonstrates that he or she is indigent or otherwise qualifies under the hardship guidelines used by the Commission and that a transcript is necessary to prosecute his or her appeal to the Board of Commissioners of the Commission.

If a party wishes to have the proceedings officially recorded by a reporter, that party shall retain the reporter and bear all of the costs of the reporter's services. Neither the Commission nor any other party shall be obligated to share this expense or to purchase a copy of the transcript from the reporter. A party retaining a reporter for a hearing shall

notify the special examiner at least one (1) day in advance of the day of the hearing.

(j) Interlocutory orders. The special examiner shall have the authority to issue all such interlocutory orders which he or she deems necessary. All interlocutory orders dealing with matters of substance, such as determinations of amounts not reasonably in dispute under Section 9.7 of these Regulations, shall be reduced to writing and served on all parties. If such an order is issued orally in the course of a hearing, it shall take effect immediately unless the special examiner otherwise specifies. In all other cases, such an interlocutory order shall take effect upon receipt by the parties.

(k) Translators. A party may have a translator assist him or her at a hearing. The cost of employing a translator shall be borne by the party.

Section 9.6 Post-hearing Procedures

(a) Briefs; proposed findings. The special examiner shall establish a briefing schedule for the parties.

(1) Filing; service. Briefs not filed and served on or before the date fixed for filing by the special examiner will not be accepted for filing. All briefs shall be accompanied by a certificate showing service upon all parties to the proceeding and the filing of two (2) copies with the special examiner. Failure to submit a brief shall in no way prejudice the rights of a party.

(2) Length; citations. Briefs shall not exceed twenty (20) double spaced, typewritten 8+ inch by 11 inch pages with 1, inch margins. Any brief more than five (5) pages in length shall begin with a summary of the arguments contained therein. Each factual argument must be supported by specific citations to the record. Each legal argument must be supported by specific citations to valid authorities. The special examiner shall reject any argument not so supported.

(3) Proposed findings. At his or her discretion, the special examiner may request proposed findings of fact and law from the parties. However, where the appellant is not represented by counsel, the special examiner shall not request proposed findings.

(b) Decisions. All final decisions on appeals heard by a special examiner shall be in writing and shall include a statement of reasons for, and a determination of each issue of law or fact necessary to, the decision. A copy of the decision shall be served on all parties.

(c) Notice of right of appeal. The special examiner shall include the following notice in the final decision of an appeal.

Right of Appeal to the Board of Commissioners of the Commission. Any party whose rights are affected by this decision and who is aggrieved by it may appeal it to the Board of Commissioners of the Boston Water and Sewer Commission. A notice of appeal must be filed with the Board of Commissioners of the Commission within fourteen (14) days of the receipt of this decision. Review by

the Board of Commissioners of the Commission, unless it otherwise orders, shall be limited to the record of these proceedings. The procedure on an appeal to the Board of Commissioners of the Commission is specified in Chapter X of the Commission's Billing, Termination and Appeal Regulations, a copy of which may be purchased from the Commission. If you do not choose to exercise your right to appeal to the Board of Commissioners of the Commission, this decision will become final.

Section 9.7 Determination of Amount of Charges

Reasonably in Dispute

(a) When made. If a party has appealed from a determination of the Administration Department as to the amount of charges due the Commission but either

- (1) The party has failed to indicate the amount reasonably in dispute on the statement of the basis for appeal required by Section 9.2 of these Regulations; or
- (2) The party has failed to pay the amount indicated on the statement of the basis of appeal as not being in dispute; or
- (3) Another party has questioned whether the calculation of the charges in dispute as represented on the statement of the basis for appeal was made in good faith,

The special examiner shall make a determination of the amount of the charges reasonably in dispute at the conclusion of the hearing. The special examiner shall simultaneously issue a written order requiring the party appealing to pay the amount of the charges found to be not reasonably in dispute to the

Commission forthwith. This Section applies to residential tenants disputing the amount of a projected bill rendered under Section 5.6.

(b) Method of calculation. Except as otherwise provided in this Section and in the absence of persuasive evidence as to the amount reasonably in dispute, the special examiner shall calculate the amount of the charges reasonably in dispute using the procedure adopted by the Commission for determining average daily use of water and sewer services and applying the rate applicable for the period of the disputed charges. The special examiner shall use actual readings for the disputed period, when available. If actual readings for the period are not available, the special examiner shall assume current readings reflect usage throughout the period. Where a customer has at his or her request had the Commission install a new meter pursuant to Section 9.3, the rate of usage indicated by the new meter, in the absence of clear and convincing proof to the contrary, shall be presumed to be correct and be used to calculate the amount of charges not reasonably in dispute.

The sum of the charges so calculated shall be multiplied by (.75), and the resulting amount shall be deemed the amount not reasonably in dispute. The special examiner shall add to this sum the amount of any applicable delinquency charges in accordance with Section 2.1 of these Regulations.

(c) Contents of order. The special examiner shall state in the written order compelling payment of charges not

reasonably in dispute that if the customer fails to pay the stated amount to the Commission within seven (7) days of the date of the order, the Commission may issue a fifteen (15) day notice of termination of service in accordance with Section 2.5(e) of these Regulations, and may proceed to terminate service.

(d) Payment schedule. Upon a showing that the customer is indigent or falls within the Commission's guidelines for determining hardship, the special examiner may establish a payment schedule for the amount not reasonably in dispute for a customer who occupies all or part of an account premises. A customer may prove indigency in any of the ways provided by Massachusetts General Laws Chapter 261, ^U27A. The payment schedule shall have a duration of not less than fifteen (15) days. If thereafter such a customer is unable to comply with the special examiner's payment schedule, he or she may seek an adjustment to the payment schedule from the Commission's Community Relations Officer.

(e) Overpayment. If, based upon the evidence produced at the hearing, the special examiner determines in his or her final order that the amount of the charges not reasonably in dispute was less than the amount paid to the Commission as a result of an order issued under the preceding subsections, the special examiner shall abate the amount he or she adjudges due the Commission by a sum equal to the amount of the overpayment plus interest at the rate of twelve (12) percent per annum on the overpayment calculated from the date of the

customer's payment. If the overpayment and the interest thereon exceed the total amount due to the Commission, the special examiner shall, at the option of the customer, order a refund or an appropriate adjustment of the Commission's next bill to the customer.

(f) Effect of nonpayment on customer's right to appeal.

The Commission may terminate service for failure to pay the amount of charges not reasonably in dispute. However, a customer's failure to pay the amount of charges not reasonably in dispute has no effect on, and does not limit, the customer's rights to a hearing before a special examiner, to an appeal to the Board of Commissioners, or to judicial review.

CHAPTER X

APPEALS TO THE BOARD OF COMMISSIONERS OF THE COMMISSION

Section 10.1 Application of this Chapter

The rules set forth in this chapter shall govern all appeals to the Board of Commissioners of the Commission of final decisions by special examiners issued under the authority delegated to them in Chapter IX of these Regulations.

Section 10.2 Notice of Appeal

(a) Time for filing. A party aggrieved by the decision of a special examiner made pursuant to Section 9.6(b) of these Regulations may file a notice of appeal with the Board of Commissioners of the Commission within fourteen (14) days of receipt of the special examiner's final decision. The notice of appeal shall be served upon the Executive Director of the Commission and upon all other parties to the proceeding before the special examiner.

(b) Content of notice. The notice of appeal shall state the name, address and telephone number of the party appealing and of that party's representative or attorney. The notice shall also state the case number(s) of the matters at issue. The notice shall indicate only that the party wishes to exercise its right of appeal. No other matters shall be addressed in it.

Section 10.3 Waiver of Appeal

Any party to a proceeding before a special examiner who does not file a notice of appeal in accordance with Section 10.2 shall be deemed to have waived its right of appeal, and the special examiner's decision shall be regarded as final as to that party. The Board of Commissioners of the Commission, upon a showing of undue hardship or of good cause, may reinstate a party's right of appeal.

Section 10.4 Appeals; Procedure

(a) Appeals limited to the record. All appeals to the Board of Commissioners of the Commission under this chapter shall be limited to a review of the record of the proceedings before the special examiner and of the special examiner's decision. The Board of Commissioners of the Commission will not entertain motions to introduce supplementary evidence.

(b) Briefs; submission.

(1) Schedule. Within seven (7) days of filing its notice of appeal, the appellant shall submit to the Board of Commissioners of the Commission a brief specifically outlining the grounds for appeal. The party in opposition shall file a reply brief within seven (7) days following receipt of the appellant's brief. Except upon a showing of extreme hardship, the Board of Commissioners of the Commission will not entertain motions for the extension of time for the filing of briefs.

(2) Filing; service. Briefs not filed and served on or before the dates established in this section will not be accepted for filing. All briefs shall be accompanied by a certificate showing service upon all parties to the proceeding before the special examiner and the filing of five (5) copies with the Board of Commissioners of the Commission.

(c) Briefs; form and contents.

(1) Form. Briefs submitted to the Board of Commissioners of the Commission shall not exceed twenty (20) double spaced, typewritten 8+ inch by 11 inch pages with 1, inch margins. Any brief more than five (5) pages in length shall begin with a summary of the arguments contained therein.

(2) Appellant's brief. The appellant's brief shall begin with specific, enumerated allegations of errors committed in the proceedings below. Each allegation of an error of fact must be supported in the text of the brief by specific citations to the record of the proceedings before the special examiner and the special examiner's decision. Each allegation of an error of law must be supported in the text of the brief by specific citations to applicable statutes or Regulations.

(3) Reply briefs. Reply briefs shall respond to each allegation of error presented in the appellant's

brief. Reply briefs shall meet the same standards of specificity required of the appellant's brief.

- (4) Other briefs. The standards of specificity stated in this section shall apply to any other briefs the Board of Commissioners of the Commission permits to be filed. The Board of Commissioners of the Commission reserves the right to reject any brief not meeting these standards.
- (5) Waiver. For good cause shown, the Board of Commissioners may waive or modify the requirements of this subsection as they apply to an appellant.

(d) Oral argument. The Board of Commissioners of the Commission may, on its own motion, call for oral argument on the appeal. The Board of Commissioners of the Commission shall notify the parties at least one (1) week in advance of the hearing if it wishes to hear oral argument. However, the Board of Commissioners of the Commission will not entertain motions for oral argument from the parties.

(e) Consideration of the appeal; notice. The Director of Administration of the Commission shall schedule the appeal for consideration at a regularly scheduled meeting of the Board of Commissioners of the Commission occurring more than seven (7) days following the filing date for the reply briefs permitted under subsection (b) of this section. The Director of Administration shall notify the parties of the date, time and place of the consideration of the appeal. The consideration of the appeal and the notice to the parties shall meet

the requirements of the Massachusetts Open Meeting Act, Mass. Gen. Laws Ann. c. 39 Section 23(A)- (C) and the Boston Water and Sewer Commission Enabling Act, Acts of 1977 c. 436 Section 3.

(f) Consideration of the appeal; decision; notice.

Upon consideration of the appeal, the Board of Commissioners of the Commission, by majority vote, may affirm, modify, reverse or remand the decision of the special examiner. The Board of Commissioners of the Commission shall promptly notify the parties of its decision on the appeal.

(g) Decisions; effect; reconsideration. All decisions by the Board of Commissioners of the Commission on appeals, except in the event of a remand to the special examiner, shall be considered as, and are, final decisions of the Commission. However, upon its own motion or that of a party made within thirty (30) days of the issuing of a final decision, the Board of Commissioners of the Commission may reconsider its decision. In the event it chooses to reconsider a decision, the Board of Commissioners of the Commission shall promptly notify the parties of its action and of the procedure it will follow on reconsideration.

(h) Newly discovered evidence. Where an appeal or a motion to reconsider is based upon newly discovered evidence that could not by due diligence have been discovered in time for it to be presented to the special examiner and where the party alleging the existence of this evidence demonstrates by means of affidavits or documents that such evidence would have

affected the outcome of its appeal, the Board of Commissioners of the Commission may remand the case to the special examiner for further findings.

Section 10.5 Interlocutory Appeals

The Board of Commissioners of the Commission will not entertain an appeal from a special examiner's interlocutory order.

